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SEP 09 2010

OFFICE OF PETITIONS

In re Patent No. 7,555,428	:	DECISION ON REQUEST
Franz et al.	:	FOR
Issue Date: 06/30/2009	:	RECONSIDERATION OF
Application No. 10/647,203	:	PATENT TERM ADJUSTMENT
Filed: 08/21/2003	:	and
Atty Docket No.	:	NOTICE OF INTENT TO ISSUE
16113-1230001 / GP-038-00	:	CERTIFICATE OF CORRECTION

This is a decision on the RESPONSE TO DECISION DISMISSING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705, filed on January 19, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred fifteen (915) days. For the reasons stated below, the petition is treated as requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred fourteen (914) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by nine hundred fourteen (914) days is **GRANTED to the extent indicated herein.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on August 22, 2006, and ends on December 25, 2007, the day before the RCE was filed, and is 491 (not 492) days. See 35 U.S.C. 154(b)(1)(B)(i). Considering the overlapping period of 151 days, from August 22, 2006, to January 19, 2007, the date the first Office action was mailed, the patent term adjustment is 914 days (820 days of Office delay + 491 years of over three years delay - 151 days overlap - 246 days of applicant delay).


The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

No fee is due with the subject request for reconsideration.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred fourteen (914) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.


Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,555,428 B1

DATED : Jun. 30, 2009

DRAFT

INVENTOR(S) : Franz et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 574 days.

Delete the phrase "by 574 days" and insert – by 914 days--